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FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

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In the Matter of

Deployment of Wireline Service Offering  
Advanced Telecommunications Capability

*et al.*

CC Docket No. 98-147 *et al.*

REPLY COMMENTS  
of the  
GENERAL SERVICES ADMINISTRATION

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## **Summary**

Comments submitted in response to the NPRM and the NOI demonstrate that most consumers have access to advanced telecommunications services, but only through facilities controlled by the incumbent local exchange carriers. To accelerate the deployment of additional advanced services, the Commission must take steps to increase competition for local access services in all communities. Moreover, the Commission must take additional steps to prevent incumbent carriers from using their control over local access facilities to make it difficult for competitive LECs to provide their own advanced telecommunications services to homes and businesses in metropolitan areas and smaller towns.

GSA urges the Commission to reject requests by incumbent LECs for unfettered authority to offer advanced services over their own networks. Regulatory restrictions that separate the activities of incumbent carriers in providing (1) their own advanced services and (2) access to the switched network and conventional voice services are necessary to fulfill the Commission's pro-competitive aims. The restrictions that the Commission has suggested are vital, because they will motivate incumbent LECs to reduce their charges for advanced services, while helping to ensure that incumbent LECs do not exploit their control over local access facilities to forestall entry by competitors into advanced services markets.

GSA also urges the Commission to deny requests by incumbent LECs to relax collocation, resale, and unbundling obligations that are equally pertinent for advanced and basic services. Potential competitors explain that delays by the incumbent carriers in meeting these obligations have deferred the benefits of additional competition for users of all services.

Finally, GSA concurs with competitive carriers and other end users that national standards concerning advanced telecommunications services are necessary at this time. Contrary to the assertions by incumbent LECs, all responsibility cannot be shifted to state regulators, because geographically dispersed end users such as the FEAs must be able to depend on consistent service quality in all jurisdictions.

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**REPLY COMMENTS  
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GENERAL SERVICES ADMINISTRATION**

The General Services Administration ("GSA") submits these Reply Comments on behalf of the customer interests of all Federal Executive Agencies ("FEAs") in response to the Commission's Notice of Proposed Rulemaking ("NPRM") released on August 7, 1998. The NPRM invites comments and replies on issues, proposals, and tentative conclusions concerning the provision of advanced telecommunications services by wireline carriers.<sup>1</sup>

**I. INTRODUCTION**

The Telecommunications Act of 1996 ("1996 Act") requires the Commission to take the steps necessary to promote innovation and investment in the telecommunications markets and to stimulate competition for all telecommunications services.<sup>2</sup> The Commission released this NPRM to address issues concerning

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<sup>1</sup> Memorandum Opinion and Order and NPRM Introduction and Overview ("Overview"), para. 7.

<sup>2</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, amending the Communications Act of 1934, 47 U.S.C. § 151 *et seq.* ("1996 Act").

innovation and investment for advanced telecommunications services provided over wireline networks. On the same date, the Commission issued a Notice of Inquiry ("NOI") in a companion proceeding that was designated to address long-term issues of competition for advanced services.<sup>3</sup>

GSA filed Comments in response to the NPRM to present its views and recommendations as an end user on the need to improve access to advanced services. In those Comments, GSA urged the Commission to permit incumbent local exchange carriers ("LECs") to provide advanced services through unregulated subsidiaries, but only with significant restrictions on the relationships between the incumbent carrier and its affiliate.<sup>4</sup> Also, GSA suggested additional steps that the Commission should take to enhance participation by competitive LECs in advanced services markets.<sup>5</sup>

About 90 other parties filed comments in response to the NPRM. Incumbent LECs, competitive LECs, interexchange carriers, Internet service providers, cable television companies, end users, suppliers, consulting firms, state regulatory agencies, and additional parties presented their positions and recommendations in voluminous comments, some running over 100 pages in length.

The Commission, as well as carriers and end users, should be able to distill a wide variety of positive approaches for improving advanced telecommunications capabilities from the comments submitted. GSA will focus these Reply Comments on positions advanced by some of the commenting parties on the issues that GSA

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<sup>3</sup> Inquiry Concerning the Deployment of Advanced Telecommunications Capability, CC Docket No. 98-146, Notice of Inquiry, released August 7, 1998.

<sup>4</sup> Comments of GSA, pp. 7-10.

<sup>5</sup> *Id.*, pp. 11-18.

discussed in its Comments in this proceeding and in its response to the NOI in CC Docket No. 98-146.

**II. THE COMMISSION SHOULD DENY PETITIONS BY INCUMBENT CARRIERS FOR MINIMAL REGULATION OF ADVANCED TELECOMMUNICATIONS SERVICES.**

**A. Incumbent LECs are seeking wide authority to offer advanced telecommunications services.**

In the NPRM, the Commission outlines rules that would allow incumbent LECs to provide advanced services through separate subsidiaries that would not be subject to the resale, unbundled access, collocation and other obligations of Section 251(c) of the 1996 Act.<sup>6</sup> The subsidiaries would also be relieved from price caps and other types of earnings regulation.<sup>7</sup>

Several incumbent LECs contend that they should have even greater flexibility in providing advanced telecommunications services. For example, U S WEST asserts that the Commission should allow incumbent LECs to integrate provision of advanced services and conventional services, and to offer advanced services free from any unbundling or resale obligations.<sup>8</sup> U S WEST also contends that the Commission should not condition regulatory flexibility on the existence of a separate data affiliate.<sup>9</sup>

GTE expresses similar views, stating that the proposed separations, unbundling, and collocation requirements would "aggravate" the existing regulatory "disparities" and deter investment in advanced services capabilities.<sup>10</sup> This carrier

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<sup>6</sup> NPRM, para. 83.

<sup>7</sup> *Id.*

<sup>8</sup> Comments of U S WEST Communications, Inc. ("U S WEST"), pp. 4-10.

<sup>9</sup> *Id.*, pp. 15-20.

<sup>10</sup> Comments of GTE Service Corporation ("GTE"), pp. 9-11.

asserts that notwithstanding the "competitive nature" of the advanced services market, incumbent LECs remain subject to burdensome and asymmetrical regulation.<sup>11</sup>

As GSA has explained, the Commission must view these requests in light of the interests of the parties making them.<sup>12</sup> While many firms are offering advanced telecommunications services over the switched networks, access to these services through fixed wireline facilities is controlled by a very small number of carriers.

**B. Most access to advanced telecommunications services is through facilities controlled by the incumbent LECs.**

In the companion NOI, the Commission requested parties to submit data on the deployment of advanced telecommunications services, the demands for additional services, and the capabilities of carriers to meet these needs.<sup>13</sup> The Commission focused this request on competitive LECs, seeking comments on whether they are likely to enter the mass market and become facilities-based competitors bypassing the existing wireline facilities.<sup>14</sup>

Responses to the NOI show that almost all consumers can obtain wideband information services offered over high-speed, long-haul data networks, including the Internet, but only by employing the wireline access facilities controlled by the incumbent LECs. For example, while Bell Atlantic asserts that "cable companies are the incumbents in providing advanced services,"<sup>15</sup> AT&T reports that there are only about 300,000 cable modem subscribers in all of North America.<sup>16</sup>

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<sup>11</sup> *Id.*, pp. 7-8.

<sup>12</sup> Comments of GSA, pp. 7-11.

<sup>13</sup> *Id.*, p. 2.

<sup>14</sup> NOI, para. 31.

<sup>15</sup> Comments of Bell Atlantic in response to NOI, pp. 5-8.

<sup>16</sup> Comments of AT&T in response to NOI, p. 13.

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With limited deployment of cable modems, wireless facilities, and satellite data services at present time, there is little question that ownership of virtually all “last mile” facilities gives incumbent LECs control over access to advanced telecommunications services by nearly all subscribers. This fact is significant in evaluating claims by incumbent LECs that they have little influence in data transmission markets.

**C. Competition for advanced services will develop initially where there is facilities-based competition for local exchange services.**

Although incumbent LECs are providing the great majority of network connections, competitive LECs are now starting to deploy advanced telecommunications services in metropolitan areas. Comments submitted in response to the NOI show that some competitive LECs are now offering advanced telecommunications services over Digital Subscriber Lines (“DSLs”).<sup>17</sup> However, competitive LECs are targeting selected business users. With the current regulatory scheme, it appears that competitive LECs will not initially try to serve “mass” consumer markets.<sup>18</sup>

While there is almost no quantitative data on market penetration, comments by other parties confirm GSA’s observations that advanced telecommunications services are far more prevalent in areas where competition exists for basic local exchange services than in areas where competition for local services has not developed. This distinction is evident both within the telecommunications industry and by comparing the telecommunications industry with the new industry of information service providers.

Prior to divestiture, there was little competition in any segment of the telecommunications industry. Similarly, when there were fewer carriers, there were

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<sup>17</sup> Comments of Kiesling Consulting LLC in response to NOI, p. 5.

<sup>18</sup> *Id.*

also fewer telecommunications services, and limited capabilities to transmit and process messages other than voice or "low speed" data transmissions.

While competition has increased dramatically in the long distance markets, competition for local services has developed selectively on a geographical basis. Generally, significant competition has developed only in urbanized areas. Correspondingly, broadband services, as well as technologies for digital access and shared access for telephony, cable television and electrical power, are most prevalent in the same urban areas where most competition for basic local services is developing.

The growth of the Internet as a worldwide network provides a contrast to the concentration of local exchange markets. The Internet has provided wide capabilities and benefits to millions of citizens in a very short period of time. Moreover, the benefits of the Internet have been achieved quite evenly, with no apparent preference to users in any geographical area. Correspondingly, the information service industry is much more fragmented and competitive than the local exchange industry.

Experience shows that open competition leads to more innovation and investment in new services. As GSA explained, open competition for provision of all telecommunications services, including basic local exchange services, is a key requirement for bringing the benefits of advanced services to all groups of users throughout the nation.<sup>19</sup>

**D. Incumbent LECs should employ a separated subsidiary to offer advanced services without regulatory surveillance.**

Since the incumbent LECs control almost all of the access facilities needed to bring advanced services offered by other firms to the public, open competition requires

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<sup>19</sup> Comments of GSA, p. 5.

careful separation between (1) their activities in providing access to the switched network and (2) their activities in providing their own advanced services. The NPRM suggests stringent requirements for structural separation:

- the incumbent and its affiliate must operate totally independently — all transactions between the two organizations must be at arm's length, in writing, and available for public inspection;
- the two organizations must maintain separate books, records and accounts, and they must have separate officers, directors, and employees;
- the affiliate may not obtain credit under an arrangement that would permit a creditor to have recourse to the assets of the incumbent;
- the incumbent LEC must not discriminate in favor of its affiliate in any way — all network elements, facilities, interfaces and systems provided by the incumbent to the affiliate must also be available to unaffiliated entities; and
- the affiliate and its incumbent must interconnect pursuant to tariff or an interconnection agreement.<sup>20</sup>

The Commission proposes to require that all structural separations and nondiscrimination requirements be met before a subsidiary would be relieved of the regulatory requirements on the incumbent LEC.<sup>21</sup> Moreover, if the advanced services affiliate derives an unfair advantage from its relationship with the incumbent at any future time, the affiliate would be viewed “as stepping into the shoes of the incumbent LEC” and would then be subject to the requirements that the Congress specified for those regulated companies.<sup>22</sup>

Incumbent LECs dispute the need for these requirements. They contend that they will have the incentive to meet the demand for advanced services only if the

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<sup>20</sup> NPRM, para. 96.

<sup>21</sup> *Id.*, para. 83.

<sup>22</sup> *Id.*

Commission eliminates regulatory restrictions on their advanced services offerings.<sup>23</sup> The incumbent LECs claim that they must be able to take advantage of the economies of scale and scope inherent in their networks by “integrating” the provision of broadband services with content-based on-line services.<sup>24</sup> The incumbent LECs also argue that these potential economies are diminished if competitors can acquire unbundled local loops.<sup>25</sup>

In its comments in response to the NPRM, the Ad Hoc Telecommunications Users Committee correctly observes that the LECs’ claims beg the question of precisely what economies of scale and scope, if any, actually exist between the “last mile” connection and advanced services, or between advanced transmission services and on-line content-based information services.<sup>26</sup> Ad Hoc states, “Upon closer examination, the actual existence of claimed economies is highly dubious at best.”<sup>27</sup>

Regulatory conditions that fully separate the activities of incumbent carriers in providing advanced services and conventional services are necessary to fulfill the Commission’s pro-competitive aims for both groups of services. First, the proposed restrictions present effective roadblocks to anti-competitive activities by either the incumbent or its affiliate.<sup>28</sup> Second, the proposed conditions motivate incumbent

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23 Petition of U S WEST for Relief from Barriers to Deployment of Advanced Telecommunications Services, filed February 25, 1998, p. 51.

24 *Id.*

25 Petition of Bell Atlantic Corporation for Relief from Barriers to Deployment of Advanced Telecommunications Services, filed February 25, 1998, p. 15-19.

26 Comments of Ad Hoc Telecommunications Users Committee (“Ad Hoc”), p. 13.

27 *Id.*, pp. 13-14.

28 Comments of GSA, pp. 7-10.

LECs to reduce prices for advanced services provided to end users and charges for interconnection services provided to other carriers.<sup>29</sup>

GSA has urged the Commission to adopt these procedures as protections for end users.<sup>30</sup> As structured in the NPRM, the plan will lead to lower prices for advanced services as well as other services provided by LECs. Moreover, the proposed plan will encourage innovation and investment that should foster deployment of advanced services in urban and rural markets.

### **III. THE COMMISSION SHOULD NOT ACCEDE TO REQUESTS TO RELAX COLLOCATION REQUIREMENTS.**

#### **A. Incumbent carriers assert that they should be relieved of collocation obligations.**

The Commission has placed pro-competitive requirements on major incumbent LECs to offer collocation to carriers who seek to place special access and switched transport facilities at a LEC's central office.<sup>31</sup> Nevertheless, as the NPRM notes, competitive LECs continue to report that while incumbent LECs may be offering physical collocation in name, they are in fact preventing open competition by restricting the types of equipment that can be placed in collocation space and by imposing substantial costs and delays on competing carriers for space and construction of collocation cages.<sup>32</sup>

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29 *Id.*

30 *Id.*

31 Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, Memorandum Opinion and Order, released June 9, 1993, *passim*; and NPRM, para. 118.

32 NPRM, para. 121.

In response to the complaints by competitive LECs, the NPRM requests comments concerning the needs for additional collocation rules.<sup>33</sup> In particular, the Commission seeks comments concerning the need for rules concerning the types of equipment that may be collocated and the allocation of the space that incumbent LECs make available for this equipment.<sup>34</sup>

These important collocation issues should be addressed in a positive and pro-competitive spirit, but the responses by the incumbent LECs are negative and anti-competitive. For example, Bell Atlantic observes that the 1996 Act gives states the responsibility to determine whether sufficient space is available for physical collocation, and the states alone should develop any new rules that are necessary to implement this authority.<sup>35</sup> Bell Atlantic claims, "States are currently examining collocation rules and policies, so there is no reason for the Commission to step in."<sup>36</sup>

In addition to drawing an improper line between Federal and state authority, the incumbent LECs also attempt to differentiate advanced services from unbundled network elements. For example, Bell Atlantic asserts that the collocation requirement in the legislation "is for interconnection and access to unbundled network elements, which are also matters over which states are granted regulatory authority under the Act."<sup>37</sup> The United States Telephone Association ("USTA") makes a similar claim. According to USTA, if the Commission were to place any additional collocation requirement, it would "preempt state regulation."<sup>38</sup>

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<sup>33</sup> *Id.*, para. 131-142.

<sup>34</sup> *Id.*

<sup>35</sup> Comments of Bell Atlantic, p. 31.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> Comments of USTA, p. 5.

GSA urges the Commission to reject these attempts to forestall action in addressing barriers to competition caused by the lack of adequate collocation opportunities. Even if Section 251(c) of the 1996 Act is to be interpreted so narrowly, Section 706 dealing specifically with "Advanced Telecommunications Incentives" gives the Commission ample authority in this case. This latter section states that if the Commission finds that advanced telecommunications services are not being deployed in a reasonable and timely fashion, "it shall take immediate action to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market."<sup>39</sup> Comments by competitive LECs in response to the NPRM show that such action is justified.

**B. Competitive LECs confirm that national guidelines for collocation procedures are now needed.**

Several carriers starting to offer local services discuss the issues of collocation at length in their comments. For example, AT&T observes that it has sought in numerous state interconnection arbitrations to expand on the categories of equipment that can be placed in a collocation space.<sup>40</sup> During this process, AT&T has encountered a number of instances in which incumbent LECs have asserted that there is "no" collocation space available in a central office.<sup>41</sup> In summary, this carrier's success in achieving the necessary collocation appears to be marginal. Opportunities and constraints on collocation have varied widely from one jurisdiction to another. Consequently, AT&T agrees with the broad principle that competition for advanced services will only be realized if the Commission adopts additional national standards

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<sup>39</sup> 1996 Act, Section 706(b).

<sup>40</sup> Comments of AT&T, p. 75.

<sup>41</sup> *Id.*

that can be used to establish a floor on collocation requirements.<sup>42</sup> The standards could be tightened, but not diminished, by the respective states.<sup>43</sup>

A recently established competitor, Allegiance, also explains the need for national guidelines. This carrier states:

Incumbent LECs are inconsistent in the standards of collocation they impose on competitive LECs in that what one carrier finds feasible and/or has been ordered by a state commission, another carrier strenuously objects to. Adoption of national standards would encourage the deployment of advanced services by increasing predictability and certainty, and by facilitating entry by competitors operating in several states.<sup>44</sup>

Allegiance urges the Commission to adopt strengthened collocation rules regardless of whether or not incumbent LECs choose to establish an advanced services affiliate.<sup>45</sup>

GSA agrees with the requests of these carriers. Moreover, as GSA explained in its Comments, regulations concerning collocation should provide competitive LECs with the maximum flexibility in selecting from among collocation options, and wide latitude in designating the equipment to be placed at the LEC central offices in order to provide diverse opportunities for deployment of advanced services by all potential carriers.<sup>46</sup>

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<sup>42</sup> *Id.*, p. 72.

<sup>43</sup> *Id.*

<sup>44</sup> Comments of Allegiance Telecom, Inc. ("Allegiance"), p. 2.

<sup>45</sup> *Id.*, pp. 2-3.

<sup>46</sup> Comments of GSA, pp. 11-12.

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**IV. CONTRARY TO CLAIMS BY INCUMBENT CARRIERS, THE COMMISSION SHOULD ENFORCE UNBUNDLING REQUIREMENTS AND ESTABLISH STANDARDS FOR LOCAL LOOPS.**

**A. Incumbent LECs incorrectly claim that unbundling will not help competition for advanced services.**

The NPRM identifies a number of issues concerning design specifications, performance requirements, and operational standards for local loops to ensure that they are used efficiently with broadband technologies.<sup>47</sup> GSA addressed the need for flexibility in access to the switched network in its Comments, urging the Commission to require unbundling of the local loops for advanced services, and to develop standards on loop spectrum management.<sup>48</sup>

Again, as with collocation issues, incumbent LECs asserts that action — if indeed any is appropriate — should only be at the state regulatory level. For example, U S WEST asserts that national standards are “poorly suited” to loop-related issues, because technical requirements and constraints vary with the equipment deployed at particular locations.<sup>49</sup> Furthermore, according to U S WEST, none of the digital loop carrier configurations at U S WEST’s remote terminal sites would permit entrants to provide advanced services over unbundled digital loops, “making the question of national unbundling rules moot.”<sup>50</sup>

Bell Atlantic takes an even more expansive position on the need for no regulations governing unbundling or resale, even at the state level. According to Bell Atlantic, the Commission should make it clear that when advanced services are

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<sup>47</sup> NPRM, paras. 151-177.

<sup>48</sup> Comments of GSA, pp. 15-17.

<sup>49</sup> Comments of U S WEST, p. 43.

<sup>50</sup> *Id.*, p. 44.

offered to the public by the local telephone company, the unbundling and resale obligations of the 1996 Act "do not apply."<sup>51</sup>

GSA urges the Commission to reject these claims. The Commission has previously found that local loops employed for advanced services carry the same obligations as other loops, for which unbundling is required. The Commission has defined the local loop as:

a transmission facility between the distribution frame, or its equivalent, in an incumbent LEC central office, and the network interface device at the customer premises. This definition includes, for example, two-wire and four-wire analog basic loops, and two-wire and four-wire loops that are conditioned to transmit the digital signals needed to provide services such as ISDN, ADSL, HDSL, and DS-1 level signals.<sup>52</sup>

GSA submits that this definition requires parallel unbundling and resale obligations whenever technically possible.

**B. Unbundling of wireline access facilities will enhance competitive options for advanced services.**

Competitive LECs stress the importance of unbundled loops to their provision of advanced telecommunications services. For example, Allegiance explains that the most significant barrier to infrastructure investment and provision of advanced services is the continuing failure of incumbent LECs to fully open their networks to competition. Allegiance urges the Commission to adopt rules that would serve as minimum standards for national loop unbundling.<sup>53</sup> Moreover, these standards would facilitate

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<sup>51</sup> Comments of Bell Atlantic, p. 18.

<sup>52</sup> First Report and Order, *Implementation Of The Local Competition Provisions In The Telecommunications Act Of 1996*, 11 FCC Rcd 15499, (1996), para. 380.

<sup>53</sup> Comments of Allegiance, p. 7.

conclusion of negotiated agreements by avoiding the need to deal with a variety of different local requirements.<sup>54</sup>

Northpoint Communications also explains that national loop standards are necessary to promote deployment of advanced telecommunications services.<sup>55</sup> Northpoint focuses on standards covering access to loop conditioning databases. This carrier explains that the competitive LECs' abilities to provide digital services to end users are significantly hampered by their inability to verify whether the existing connections owned by the wireline carriers have the required technical characteristics.<sup>56</sup>

As GSA has explained, the Commission has taken a pro-competitive step in its tentative conclusion that incumbent LECs must provide sub-loop unbundling unless they can demonstrate technical infeasibility on a case-by-case basis.<sup>57</sup> Furthermore, the Commission should adopt national guidelines covering provision of information to competitive LECs, spectrum management and the equipment attached to local loops.<sup>58</sup> While some state regulators are also expanding standards for local exchange services, national guidelines would provide a needed measure of consistency.

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54 *Id.*

55 Comments of Northpoint Communications Inc. ("Northpoint"), p. 17.

56 *Id.*

57 Comments of GSA, p. 17.

58 *Id.*, p. 18.

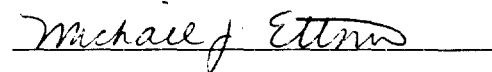
## V. CONCLUSION

As a major user of telecommunications services, GSA urges the Commission to implement the recommendations set forth in these Reply Comments.

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